COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

CRIMINAL APPEAL NO.156 OF 2007

(Old Case No.2201 of 1984)

Shiv Singh and others ..... Appellants

Versus

The State of U.P. ..... Opposite Party

Sri B.S. Adhikari, learned counsel for the appellants.
Sri Harish Pujari, learned Addl. GA for the State.

Approved for reporting.

~~Not approved for reporting.~~

Date: October 11, 2007

(Dharam Veer, J.)

Reserved

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL NO. 156 of 2007
(Old Case No.2201 of 1984)

1. Shiv Singh S/o Sher Singh
2. Diwan Singh S/o Sher Singh
3. Madan Singh S/o Sher Singh
4. Chandan Singh S/o Govind Singh
5. Pan Singh S/o Chandan Singh
6. Pan Singh S/o Kundan Singh
   All residents of Village Nauala, Patwari
   Kshetra Sheetala Khet,
   P.S. & District Almora.

..... Appellants

Versus

The State of U.P. ... Opposite Party

Dated: October 11, 2007

Sri B.S. Adhikari, learned counsel for the appellants.
Sri Harish Pujari, learned Addl. GA for the State.

Hon'ble Dharam Veer, J.

This appeal, preferred under Section 374(2) of The Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 03.08.1984 passed by Sessions Judge, Almora in Sessions Trial No.13 of 1983, State Vs. Shiv Singh & others, whereby the Sessions Judge, Almora has convicted the appellant Shiv Singh under Sections 147, 307, 323/34 of The Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.)* and awarded sentence of 6 months R.I., u/S 147 I.P.C., 7 years R.I. u/S 307 I.P.C. and 6 months R.I. u/S 323/34 I.P.C. and has convicted appellant Chandan Singh u/S 307/149, 147, 323/34 I.P.C. and awarded sentence for 4 years R.I. under Section 307/149 I.P.C., 6 months R.I.

u/s 147 I.P.C. and 6 months R.I. u/S 323/34 I.P.C. and has convicted appellants Pan Singh S/o Chandan Singh, Pan Singh S/o Kundan Singh, Diwan Singh and Madan Singh u/Ss 147 & 307/149 I.P.C. and awarded sentence for 6 months R.I. u/s 147 I.P.C. and 4 yearns R.I. u/S 307/149 I.P.C. It has also been directed that all the sentences of each of the accused shall run concurrently. Learned Sessions Judge has acquitted accused Smt. Gawali Devi alias Ganguli Devi for the offence punishable under Sections 147, 307/149 & 323/34 I.P.C.

2. Learned C.J.M., Almora has submitted a report dated 02.07.2007 that appellants Chandan Singh and Madan Singh died. Hence, the appeal against appellants Chandan Singh and Madan Singh stands abated.

3. In brief, the prosecution case is that on 21.04.1982 at about 7.30 PM Bir Singh had gone to his field to cut the grass. In the field human excreta was there then Bir Singh abused to the person who had done this foul act. On this, the appellant Shiv Singh armed with axe (Kulhari), Chandan Singh, Pan Singh son of Chandan Singh, Pan Singh son of Kundan Singh, Diwan Singh, Madan Singh and Smt. Gawali Devi alias Smt. Ganguli Devi armed with *Lathis* and *Dandas* with common intention reached in the field of Gaje Singh and they started to beat Bir Singh. When Smt. Basuli Devi, daughter of Gaje Singh and the sister of Bir Singh reached at the place of occurrence and tried to save Bir Singh then she was also beaten with *Danda* and stone. Seeing that the appellants were beating his daughter and son, Gaje Singh also tried to save them. Thereupon, appellant Shiv Singh told Gaje Singh that he would kill him today and appellant Shiv

Singh caused injury to Gaje Singh with axe (Kulhari) and the rest of the accused-appellants caused injury to Gaje Singh with *Lathis* and *Dandas.* Due to which Gaje Singh received injuries on his head and fell down on the ground. Soban Singh, Khim Singh, Thakur Singh and Daulat Singh of the same village came to save them. Seeing the witnesses, the appellants ran away from the place of occurrence. After that Gaje Singh was taken to the District Hospital, Almora and in the hospital Gaje Singh and his daughter Basuli Devi were medically examined by the Medical Officer. Gaje Singh has further averred in the F.I.R. that appellant Shiv Singh and other co-accused caused injuries to him, his son and his daughter with common intention to kill him. With the same averments, Gaje Singh lodged the F.I.R. at Police Station Almora on 22.04.1982 at 7.3. PM, that F.I.R. is Ex. Ka-1. On the basis of this F.I.R., the Head Moharir Jagdish Prasad prepared a Chik Report i.e. Ex.Ka-4 and the entry was made in the G.D., the carbon copy of the G.D. is Ex.Ka-5. Injured Gaje Singh was medically examined by the Emergency Medical Officer, District Hospital, Almora on 22.04.1982 at 2.10 PM. The injury report was prepared by the Medical Officer i.e.Ex-2. Basuli Devi was also medically examined by the Emergency Medical Officer, District Hospital, Almora on 22.04.1982 at 2.25 PM, the injury report is Ex.Ka-3. Then the investigation was transferred to the Patwari concerned as the Patwari authorized to investigate the matter (in the rural areas of hill Districts of Uttarakhand the Patwaris are vested with the police powers). The Patwari, Sheetala Khet submitted a report to the Chief Judicial Magistrate, Almora on 28.04.1982, that report is Ex.Ka.6 During the course of the investigation the Investigating Officer (Patwari) took the

blood stained clay from the place of occurrence and the *Fard* was prepared, that Fard is Ex.Ka-7. He also took into possession the blood stained stone from the place of occurrence and the *Fard* was prepared, that *Fard* is Ex.Ka-8 and he also took the plain clay from the place of occurrence and the *Fard* was prepared, that *Fard* is Ex.Ka-9. The Investigating Officer (Patwari) also took the blood stained clothes of injured Gaje Singh in his possession and *Fard* for the same was prepared i.e. Ex. Ka-10. He also prepared the site plan of the place of occurrence. The site plan is Ex.Ka-11. After that the investigating was transfer to the Kanoongo. The Kanoongo submitted a report to the Chief Judicial Magistrate, Almora for the chemical examination of the material recovered and the blood stained clothes, the report is Ex.Ka-12. The Chemical Examiner submitted reports after examination, that reports are Ex.Ka-14 and Ex.Ka-15. During the course of the investigation, the Investigating Officer recorded the statements of the witnesses and after completing the investigation, he submitted a charge sheet against the appellants and co-accused Smt. Gawali Devi alias Smt. Ganguli Devi on 22.06.1982, the charge sheet is Ex.Ka-13.

4. Learned Chief Judicial Magistrate, Almora committee the case on 02.03.1983 to the Court of Session under Section 209 Cr.P.C. after complying the provisions of Section 207 Cr.P.C.

5. Learned Sessions Judge, Almora framed charges against appellant Shiv Singh under Sections 147 & 307 I.P.C. on 11.08.1983 and the charges were read over and explained to the appellant who pleaded not guilty and

claimed to be tried. Against appellants Chandan Singh, Pan Singh son of Chandan Singh, Pan Singh son of Kundan Singh, Diwan Singh, Madan Singh and Smt. Ganguli Devi the charges were framed under Sections 147 and 307 I.P.C. read with Section 149 I.P.C. and the charges were also read over and explained to the accused persons, who pleaded not guilty and claimed to be tried. Against appellants Shiv Singh, Chandan Singh and Smt. Ganguli Devi the charges were also framed under Section 323 I.P.C. read with Section 34 I.P.C. and the charges were also read over and explained to the accused persons, who pleaded not guilty and claimed to be tried.

6. To prove its case prosecution examined P.W.1 Pan Singh (scriber of the written F.I.R.), P.W.2 Gaje Singh (complainant and the injured), P.W.3 Km. Basanti Devi alias Basuli Devi (injured), P.W.4 Dr. Ashok Sharma, who has medically examined injured Gaje Singh and Basuli Devi, P.W.5 Bir Singh (injured and eye witness), P.W.6 Head Constable Jagdish Prasad and P.W.7 Pan Singh Rawat, Patwari (Investigating Officer). After that the statements of the appellants were recorded under Section 313 Cr.P.C., who denied the allegations made against them.

7. After appreciating the evidence on record and hearing learned counsel for both the parties, the learned Sessions Judge Almora has convicted appellant Shiv Singh under Sections 147, 307, 323/34 I.P.C. and awarded sentence of 6 months R.I., u/S 147 I.P.C., 7 years R.I. u/S 307 I.P.C. and 6 months R.I. u/S 323/34 I.P.C. and has convicted appellant Chandan Singh u/S 307/149, 147, 323/34 I.P.C. and awarded sentence for 4 years R.I. under

Section 307/149 I.P.C., 6 months R.I. u/s 147 I.P.C. and 6 months R.I. u/S 323/34 I.P.C. and has convicted appellants Pan Singh S/o Chandan Singh, Pan Singh S/o Kundan Singh, Diwan Singh and Madan Singh u/Ss 147 & 307/149 I.P.C. and awarded sentence for 6 months R.I. u/S 147 I.P.C. and 4 years R.I. u/S 307/149 I.P.C. It has also been directed that all the sentences of each of the accused shall run concurrently. Learned Sessions Judge has acquitted accused Smt. Gawali Devi alias Smt. Ganguli Devi for the offence punishable under Sections 147, 307,149, & 323/34 I.P.C.

8. Against the said judgment and order, the appellants have preferred the present appeal.

9. I have heard Sri B.S. Adhikari, learned counsel for the appellants and Sri Harish Pujari, learned Additional Government Advocate for the State and perused the entire record of the trial court as well as the instant appeal.

10. To prove its case the prosecution has examined P.W.1 Pan Singh, who has states in his statement that Gaje Singh injured and all the seven accused were known to him before the date of incident. All these persons belong to his village and he has indentified all the appellants/accused in the court. On 22.04.1982 he had gone to the District Hospital to see the injured Gaje Singh. There he found Gaje Singh in an injured condition. On the dictation of Gaje Singh he had written a report on 22.04.1982 and after reading the report Gaje Singh had signed on the report, that report is Ex.Ka-1. Then Gaje Singh asked him to submit this report in the Police Station, as he was not to able to go to the Police Station due to his

injuries. On the same day, in the evening he submitted the report in the Police Station, Almora. In the cross examination in para no.4 he has stated that on the date of the incident he was working in the Forest Department, Almora and he was living at Mal Road in the quarter of Forest Department, Almora. This witness was cross-examined by the defence counsel but nothing has come out from his statement which may create any doubt in his evidence. The evidence of this witness is reliable and believable.

11. PW.2 Gaje Singh is the complainant and an injured witness. He has stated that he identified the accused-appellants, who were present in the court on the date of his statement. On that day appellant Chandan Singh was not present in the court. He has further stated that all the accused-appellants belong to his village and they were known to him before the incident. Km. Basuli Devi is his daughter and Bir Singh is his son. He has further stated that the above said incident was taken place about one and half years before, the time was about 6 O' clock in the evening. He had asked his son Bir Singh to take grass from his field and Bir Singh had gone to cut the grass. After some time he had heard the noise of weeping and crying of Bir Singh, then he asked his daughter Basuli Devi to go and see why Bir Singh was weeping and crying. Then Basuli Devi whet to the field and after some time he also heard the noise of weeping and crying of Basuli Devi. On hearing the noise, he himself went to the field where he saw that all the appellants and Gawali Devi were standing there and all the sever accused persons were armed with *Lathis* and they were beating Basuli Devi with *Lathis,* then he asked the appellants/accused why they were beating to

his daughter, whatever they wanted to say tell him. The appellants had also torn the clothes of Basuli Devi then he (Gaje Singh) tried to save his daughter. Meanwhile, appellant Pan Singh S/o Kundan Singh caught hold him from his backside and appellant Diwan Singh caught his neck from the front with his both hands and appellant Shiv Singh caused injury on his (Gaje Singh) with axe (*Kulhari*) due to which he received the injuries on his forehead. Appellant Madan Singh told to be fallen down him (Gaje Sing) on the land and to be beaten him. Thereafter, Shiv Singh caused the injury with axe (*Kulhari*)on his head. After that Pan Singh S/o Kundan Singh and Diwan Singh made him (Gaje Singh) fall down on the land. As he fell down on the land all the accused persons beat him by *Lathies* and kicks due to which his backbone was fractured and blood was coming in the vomit and he became unconscious. The witnesses Thakur Singh, Khim Singh and Daulat Singh etc. had seen the incident from some distance. He came to sense in the night when he was at home. Next day morning, he sent Ratan Singh and Pratap Singh to lodge the FIR of the above said incident to the Patwari but they could not get the Patwari, hence the report was not lodged to the Patwari. Then he was taken to the Sheetala Khet, Hospital, in the Sheetala Khet Hospital, Doctor refused to treat him then a taxi was called on telephone and he was sent to the District Hospital, Almora where he was medically examined and treated by the Doctor. In the hospital, on his dictation Pan Singh had written a report and after reading the report he signed on that report, i.e. Ex.Ka. 1. Thereafter, Pan Singh submitted that report to Police Station, Almora and the blood stained clothes i.e., Shirt and Trousers (Paijama) were handed over to the Patwari, (Investigating Officer) and were sealed on

the spot. The blood stained clothes were opened in the court and he has identified that Shirt and Trousers (Paijama) i.e. Ex.1 and Ex.2 In cross-examination in para 14 he has stated that ''शिवसिंह मुलजिम ने जिस कुल्हाड़ी से मुझे मारा था वह मुलजिम चन्दनसिंह के आंगन में पड़ी थी और उसे उठाकर उसने मुझे मारा था।'' Shiv Singh caused the injury to him with axe (*Kulhari*) that was lying in the courtyard of appellant Chandan Singh. In para 27 of the cross-examination he has stated that ''मुझे नहीं मालूम कि घटना स्थल से कौन लोग उठाकर मुझे मेरे घर ले गये क्योंकि मैं बेहोश था। उसी रात को करीब एक बजे मुझे अपने घर में जब होश्र आया तब मुझे पता चला कि पत्नि कमला व मेरी लडकीं वसूली देवी मुझे घटनास्थल से उठाकर मेरे घर तक ले आई थी और किसी आदमी ने मुझे न उठाया न ले गया मूझे मालूम कि घटना स्थल पर मौजूद लोगों में से मुझे वहॉ से उठाकर मुझे घर पर क्यों नहीं ले आए। फिर कहा वे लोग मुलजिम से डर गए।'' He does not know that who took him from the place of the occurrence to his house because he was unconscious. On that night at about 1:00 AM when he came to sense then he knew that his wife Smt. Kamla Devi and his daughter Basuli Devi had taken him from the place of occurrence to his house. No other person had helped him. He has further stated that other people who were present on the place of occurrence had not taken him to his house. Due to fear of the accused-appellants. In para 30 of the cross-examination he has stated that ''मुझे होश आने के करीब चार घन्टे बाद मुझे शीतलाखेत ले गए। ऐसा नहीं हुआ कि होष आने के तुरन्त बाद मुझे तुरन्त शीतलाखेत ले गए हो। इन चार घन्टों में मैं बराबर अपने घर पर ही रहा और कहीं नहीं गया। (Self-दो आदमी पटवारी जी के पास रिपोर्ट करने भेजे थे जिन्होंने लौटकर बताया कि वे नहीं मिले।) He was taken to Sheetala Khet after 4 hours of coming into sense. During these 4 hours he was remained in his house. He further stated that two persons were sent to the Patwari for lodging the report but they could not get the Patwari. This witness was cross examined at length by the defence counsel but nothing has come out from his statement which may create any doubt in his evidence. The evidence of this witness is reliable, believable and natural.

12. PW.3 Km. Basanti Devi alias Basuli Devi, who has stated that she identified the accused persons in the court on the date of her statements. On that date appellant Chandan Singh was not present in the court. She has further stated that all the seven accused persons belong to her village. The said incident was taken place at about 1 year and 7-8 months before. The time was about 6 O' Clock in the evening. Her younger brother Bir Singh had gone to the field to cut the green barley. The field of the complainant is near the house of the appellant/accused Chandan Singh. When she reached to her filed then she saw that appellants/accused Chandan Singh, Shiv Singh and Ganguli Devi were beating her brother Bir Singh. Her brother Bir Singh was weeping. She asked to the appellants/accused not to beat her brother then Ganguli Devi (who has been acquitted by the trial court) caught her braid and appellant Shiv Singh torn her with cloth and appellant Chandan Singh beat her with *Danda.* She was crying. After hearing her cries the other appellant/accused Madan Singh, Pan Singh S/o Chandan Singh, Pan Singh S/o Kundan Singh and Diwan Singh also reached at the place of occurrence and all four accused persons told that you had beaten them (Bir Singh and Basuli Devi), then burry them after digging a ditch. When she cried loudly then her father Gaje Singh reached there. Her father asked the appellants/accused why they were beating his children. On that, Pan Singh S/o Kundan Singh and Diwan Singh caught hold her father and Shiv Singh caused the injury with axe (*Kulhari*) to her father and that axe (*Kulhari*) was taken by Shiv Singh from the courtyard of Chandan Singh. After receiving the injuries her father fell down on the ground then Madan Singh also caused the injury to her

father with *Lathi*. After that all the seven accused persons beat her father. After hearing the noise, witnesses Thakur Singh, Khim Singh, Daulat Singh and Soban Singh and other people reached at the place of occurrence and asked the appellants/accused not to beat them (complainant Gaje Singh, Bir Singh and Basuli Devi). Thereafter the appellants/accused went towards their courtyard and her father became unconscious. Her father was vomiting and blood was coming in that vomit. After some time her mother Smt. Kamla Devi reached at the place of occurrence and her mother took her father to the house by taking him on her back. Next morning, she went along with her father from her house to Sheetala Khet Hospital and thereafter District Hospital, Almora where her father was admitted and she was also medically examined by the doctor. In the cross-examination, in para no.7 she has stated that ''हमारी सब मुलजिमान से पहले से ही रंजिश है।'' She (complainant party) has enmity with all the appellants/accused. In cross-examination, in para no. 33 she has stated that ''दूसरे दिन सबेरे लगभग 8 बजे हमारे पिताजी को शीतलाखेत अस्पताल ले गये। मैं और मेरा भाई वीरसिंह पिताजी के साथ शीतलाखेत गये थे। मेरी मॉ साथ नहीं गई। पिताजी को शीतलाखेत ले जाने से पहले हमारे घर पर इस घटना की कोई स्पष्ट रिपोर्ट नहीं लिखी गई।'' Next day morning at about 8 AM her father was brought to the Sheetala Khet Hospital and she herself and her brother Bir Singh also went along with their father to Sheetala Khet Hospital and before reaching Sheetala Khet, no report was lodged. This witness was cross examined at length by the defence counsel but nothing has come out from her statement which may create any doubt in her evidence. The evidence of this witness is reliable and believable.

13. PW.4 is Dr. Ashok Sharma, who has stated in his statement that on 22.04.1982 he was posted a Medical

Officer, District Hospital, Almora. On that day at about 2:10 PM injured Gaje Singh was medically examined by him. He has identified Gaje Singh in the court on the basis of the identification marks and he has found the following injuries on his body:-

1. *4.5cm x 0.2cm x 0.6cm. deep incised wound present over right side of forehead, 2cm above the right eyebrow, i.5 cm away from mid line.*
2. *3.0cm x 0.5 cm x 0.5cm deep lacerated wound present over left side of forehead, 2cm above the left eyebrow and 3.5 cm away from mid line. 5cm x 5 cm swelling is present all around the injury. Left upper and lower eyelids are blackish and swollen (black eye).*
3. *5 cm x 3 cm contusion over right infra scapular region at the level 7th to 9th thoracic vertebra.*

14. He has further stated that all the injuries were kept under observation and the x-ray was advised. He has further stated that injury no.1 could possibly be caused by sharp edged weapon and injury nos.2 and 3 could possibly be caused by blunt object and all the injuries were about 24 hours old from the time of medical examination. He has prepared the report at the time of medical examination, that report is Ex.Ka.2. he has further submitted that injury no.1 could possibly be caused by axe (*Kulhari*) from the side to sharp edged and injury nos.2 and 3 could possibly be caused by wood side of the axe (*Kulhari*) and could possibly by caused by *Danda* also. He has further submitted that the head is the vital part of the body. He has further submitted that on 22.04.1982 at 2.25 PM he had examined Basuli Devi and found the following injuries on her body:-

1. *8cm x 2cm abrasion present over back of left shoulder.*
2. *1 cm x 1 cm abrasion over extension aspect of right forearm, 10 cm proximate to the writs joint. 3 cm x 3 cm swelling is present all around the swelling.*
3. *1 cm x 1 cm abrasion present over right lateral side of abdomen, 3 cm above the iliac crest.*
4. *Multiple abrasions present in an area of 5 cm x 3 cm over flexon aspect of left arm 1 cm above the left elbow joint.*

15. He has further stated that all the injuries of Basuli Devi were simple in nature and could possibly be caused by blunt object and all the injuries were about 24 hours old from the time of the medical examination. He prepared the medical report at the time of the medical examination, that medical report is Ex.Ka.3. All these injuries could possibly be caused by *Danda* or by dragging. The above said injuries could possibly be caused on 21.04.82 at 7:30 PM.

16. PW.5 is Bir Singh, who has stated that he identified the accused persons who were present in the court at the time of his statement. Two accused Madan Singh and Gawali Devi were not present in the court on that day. The incident was taken place on 21.04.1982 in the evening at about 6 O' Clock. He had gone to his filed for cutting the green barley for his buffalos. That field is near the house of the appellant Chandan Singh. He had seen in the field that the human excreta was there, then he abused to the persons who had done this foul act. In hearing this, three appellants/accused, namely, Shiv Singh, Chandan Singh and Gawali Devi came in his filed. Gawali Devi snatched his sickle from his hand and Shiv Singh caught hold him and Chandan Singh slapped him then he cried

and started weeping. After hearing his noise and weeping his sister Basuli Devi reached at the place of occurrence and she asked from the appellants/accused why they were beating to her brother. On this, Gawali Devi caught her braid and Shiv Singh torn her clothes and Chandan Singh beat her with *Lathi. After* that Basuli Devi also started crying and weeping. Thereafter, four other accused persons, viz. Diwan Singh, Pan Singh S/o Kundan Singh, Pan Singh S/o Chandan Singh and Madan Singh reached at the place of occurrence and started to abuse them (Bir Singh and Basuli Devi). Then these four accused persons, who came later, asked the other three accused persons who were already present there that as they had beaten them, then burry them also after digging a ditch. They started to weep and cry. Meanwhile, his father Gaje Singh reached there and asked from the accused-appellants why they were beating his children. On this, appellant Pan Singh S/o Kundan Singh and Diwan Singh caught hold his father and Shiv Singh had taken the axe (*Kulhari*) from the courtyard of Chandan Singh and caused the injury with that axe (*Kulhari*) on the head of his father. Due to this injury the blood was oozing out from his head and his father fell down on the ground then he and Basuli Devi started to cry and Madan Singh caused the injury by *Lathi* on the back of his father. After that the witnesses Thakur Singh, Khim Singh, Daulat Singh and Soban Singh reached at the place of occurrence and the appellants/accused ran away from the place of occurrence. After that his father had blood vomiting. After about half an hour his mother Smt. Kamla Devi reached at the place of occurrence and she took Gaje Singh to the house on her back. Next morning, his father was taken to Sheetala Khet. This witness was also cross-examination at length by the defence counsel but

nothing has come out from his statement which may create any doubt in his evidence. The evidence of this witness is reliable and believable.

17. PW.6 is Head Constable Jagdish Prasad who has stated that on 22.04.1982 he was posted as Head Moharir at Police Station, Almora. On that day at about 19.30 hours Pan Singh had come with the report i.e., Ex.Ka.1. On the basis of this report, he prepared the chick F.I.R. i.e. Ex.Ka-4 and the entry was made in the G.D., the carbon copy of that G.D. is Ex.Ka.5. The case was concerned with the Revenue Police, hence all the concerning papers were forwarded to the S.D.M. Baramandal for necessary actions and entry was also made in the G.D. No. 39 i.e. Ex.ka-5.

18. PW.7 is Pan Singh Rawat, Patwari (Investigating Officer of the case), who has stated that in 1982 he was posted as Patwari Kshetra Sheetala Khet. Naula Patti Talla Tikhun area also comes in Sheetala Khet area. The investigation of the present case was entrusted to him. For that he prepared a memo i.e. Ex.Ka-6. On the basis of this, the case was registered as Case Crime No.02/82 and the investigation was started. During the course of the investigation he recorded the statements of the witnesses and prepared the site plan of the place of occurrence and collected the blood stained clay, blood stained stones and the plain clay from the place of occurrence and prepared the three *Fards* i.e. Ex.Ka-7. Ex.Ka-8 & Ex.Ka-9. All the articles were sealed on the spot and the blood stained clothes of injured Gaje Singh were also taken into the possession and the *Fard* was prepared i.e. Ex.Ka.10. All the blood stained clothes were sealed and he has proved the site plan of the place of occurrence i.e. Ex.Ka.11. On

02.05.1982 the investigation of the above said case was transferred by Bishan Singh Mehta (Nayab Tehsildar) to Kanoongo and on the same day i.e. on 02.05.1982 he transferred all the connected papers of the above said case to Ganga Prasad Kanoongo and the case property was also handed over to the Kanoongo. On 05.05.1982 by the order of the court, the sealed mohar case property was deposited in the storeroom (Mall Khana) Almora by the Kanoongo and the memo was prepared i.e. Ex.Ka.12. After completing the investigation Ganga Prasad Kanoongo submitted charge sheet on 22.06.1982 i.e. Ex.Ka.13. He has identified the signature of Ganga Prasad Kanoongo as he had worked with Ganga Prasad Kanoongo. He further submitted that Ganga Prasad Kanoongo recorded the statements of the witnesses Pan Singh, Gaje Singh, Basuli Devi and Bir Singh etc. in his presence.

19. Head Constable Nityanand Bhatt, Malkhana Moharir, has stated in his affidavit that he was posted at sadar Malkhana, Almora as Malkhana Moharir since 26th March 1979. On 05.05.1982 Sri Kishori Lal deposited four bundles of articles relating to above said case in sealed cover and with specimen seal. He made entry in the Malkhana Register after depositing the said articles. He stated the true copy of the Malkhana Register, which was annexed, to be true. He has further stated that on 17.07.1982 the articles of the above said case was sent to Agra in sealed cover for chemical examination through 92 C.P. Thakurdas, P.S. Almora by order of Chief Judicial Magistrate with specimen seal. He has further stated that on 20.09.1982 the articles of the aforesaid case was received by him from Agra in sealed cover and with specimen seal after chemical examination through 92 C.P.

Thakurdas, entry of which was made by him in the Malkhana Register. The articles of the above said case remained intact in sealed cover whenever he was posted at Malkhana.

20. After that the statements of the appellants/accused were recorded under Section 313 Cr.P.C. who have denied the allegations made against them but they have not produced any oral evidence and in documentary evidence they have produced Ex.Kha-1 in their defence.

21. Learned counsel for the appellant Sri B.S. Adhikari, has argued that on the basis of the above said evidence no case under Section 307 I.P.C. is made out against the accused-appellants and at the most offence only under Section 324 I.P.C. is made out against the accused-appellants on the basis of the injuries.

22. On the basis of the evidence discussed above, it is proved that on 21.04.1982 at about 7:30 PM at village Naula, Patti Talla Tikhun, Tehsil and District Almora the appellants had formed an unlawful assembly with the common object and with the common intention and with the common knowledge to each and every appellant and appellant Shiv caused injuries to Gaje Singh with axe (*Kulhari*) on his head and rest of the accused-appellants caused injuries to Gaje Singh with *Lathis*. The appellants also caused the injuries with *Lathis* to Bir Singh and Basuli Devi on the said date and time. This fact is proved by the statement of P.W.2 Gaje Singh, P.W.3 Basuli Devi, P.W.5 Bir Singh and the injury reports of Gaje Singh i.e. Ex.Ka.2

and Basuli Devi i.e. Ex.Ka.3 and corroborated by the statement of P.W.4 Dr. Ashok Sharma.

23. PW.2 Gaje Singh has stated that the above said incident was taken place about one and half years before, the time was about 6 O' clock in the evening. He had asked his son Bir Singh to take grass from his field and Bir Singh had gone to cut the grass. After some time he had heard the noise of weeping and crying of Bir Singh, then he asked his daughter Basuli Devi to go and see why Bir Singh was weeping and crying. Then Basuli Devi went to the fields and after some time he also heard the noise of weeping and crying of Basuli Devi. On hearing the noise, he himself went to the field where he saw that all the appellants and Gawali Devi were standing there and all the seven accused persons were armed with *Lathis* and they were beating Basuli Devi with *Lathis,* then he asked the appellants/accused why they were beating to his daughter, whatever they wanted to say tell him. The appellants had also torn the clothes of Basuli Devi then he (Gaje Singh) tried to save his daughter. Meanwhile, appellant Pan Singh S/o Kundan Singh and appellant Diwan Singh caught hold him and appellant Shiv Singh caused injury on him (Gaje Singh) with axe (*Kulhari*) due to which he received the injuries on his forehead. Appellant Madan Singh told to be fallen down him (Gaje Sing) on the land and to be beaten him. Thereafter, Shiv Singh caused the injury with axe (*Kulhari*) on his head. After that Pan Singh S/o Kundan Singh and Diwan Singh made him (Gaje Singh) fall down on the land. As he fell down on the land all the accused persons beat him with *Lathis* and kicks due to which his backbone was fractured and blood was coming in the vomit and he became unconscious. PW.3 Km. Basant Devi alias

Basuli Devi has stated that the said incident was taken place at about 1 year and 7-8 months before. The time was about 6 O' Clock in the evening. Her younger brother Bir Singh had gone to the field to cut the green barley. The field of the complainant is near the house of the appellant/ accused Chandan Singh. When she reached to her field then she saw that appellants/accused Chandan Singh. Shiv Singh and Ganguli Devi were beating her brother Bir Singh. Her brother Bir Singh was weeping. She asked to the appellants/accused not to beat her brother then Ganguli Devi (who has been acquitted by the trial court) caught her braid and appellant Shiv Singh torn her cloth and appellant Chandan Singh beat her with *Danda*. She was crying. After hearing her cries the other appellant/accused Madan Singh, Pan Singh S/o Chandan Singh, Pan Singh S/o Kundan Singh and Diwan Singh also reached at the place of occurrence and all four accused persons told that you had beaten them (Bir Singh and Basuli Devi), then burry them after digging a ditch. When she cried loudly then her father Gaje Singh reached there. Her father asked the appellants/accused why they were beating his children. On that, Pan Singh S/o Kundan Singh and Diwan Singh caught hold her father and Shiv Singh caused the injury with axe (*Kulhari*) to her father and that axe (*Kulhari*) was taken by Shiv Singh from the courtyard of Chandan Singh. After receiving the injuries her father fell down on the ground then Madan Singh also caused the injury to her father with *Lathi*. After that all the seven accused persons beat her father. Afterh hearing the noise, witnesses Thakur Singh, Khim Singh, Daulat Singh and Soban Singh and other people reached at the place of occurrence and asked the appellants/accused not to beat them (complainant Gaje Singh, Bir Singh and Basuli Devi).

Thereafter the appellants/accused went towards their courtyard and her father became unconscious. Her father was vomiting and blood was coming in the vomit. PW.5 Bir Singh has stated that the incident was taken place on 21.04.1982 in the evening at about 6 O' Clock. He had gone to his field for cutting the green barley for his buffalos. That field is near the house of the appellant Chandan Singh. He had seen in the field that the human excreta was there, then he abused to the persons who had done this foul act. On hearing this, three appellants/accused, namely, Shiv Singh, Chandan singh and Gawali Devi came in his field. Gawali Devi (who has been acquitted by the trial court) snatched his sickle for his hand and Shiv Singh caught hold him and Chandan Singh slapper him then he cried and started weeping. After hearing his noise and weeping his sister Basuli Devi reached at the place of occurrence and she asked from the appellants/accused why they were beating to her brother. On this, Gawali Devi caught her braid and Shiv Singh torn her clothes and Chandan Singh beat her with *Lathi.* After that Basuli Devi also started crying and weeping. Thereafter, four other accused persons, viz. Diwan Singh, Pan Singh S/o Kundan Singh, Pan Singh S/o Chandan Singh and Madan Singh reached at the place of occurrence and started to abuse them (Bir Singh and Basuli Devi). Then these four accused persons, who came later, asked the other three accused persons who were already present there that as they had beaten them, then burry them also after digging a ditch. They started to weep and cry. Meanwhile, his father Gaje Singh reached there and asked from the accused-appellants why they were beating his children. On this, appellant Pan Singh S/o Kundan Singh and Diwan Singh caught hold his father and Shiv Singh had taken the axe (*Kulhari*) from the

courtyard of Chandan Singh and caused the injury with that axe (*Kulhari*) on the head of his father. Due to this injury the blood was oozing out from his head and his father fell down on the ground then he and Basuli Devi started to cry and Madan Singh caused the injury by *Lathi* on the back of his father. After that the witnesses Thakur Singh, Khim Singh, Daulat Singh and Soban Singh reached at the place of occurrence and the appellants/accused ran away from the palce of occurrence. After that his father had blood vomiting.

24. From the evidence discussed above, it is proved that the accused-appellants were assembled at the place of occurrence with the common object, intention and knowledge and had caused the injuries to Gaje Singh, Bir Singh and Basuli Devi. They had formed and unlawful assembly with the common object and intention to cause injury to Gaje Singh and being a member a unlawful assembly, each and every member of that assembly used a criminal force against the injured persons with the common object and intention to kill Gaje Singh. Their object was common and that was in the knowledge of each and every appellant/accused who had caused the injury to injured Gaje Singh, Bir Singh and Basuli Devi. The accused-appellants caused the injury to Gaje Singh with such intention or knowledge and under circumstances that the injuries caused by them might cause death to Gaje Singh and for that they would be guilty of a murder. Three injuries were shown on Gaje Singh; two injuries were on head that is vital part of the body and one injury was on the back. Injuries on the vital part of Gaje Singh were caused by Shiv Singh with deadly weapon like axe (*Kulhari*) with such intention or knowledge, and under such

circumstances that injuries caused by him might cause death of Gaje Singh and he would be guilty of murder and rest of the appellant had also caused injuries to Gaje Singh with *Lathies*. The accused-appellants had formed an unlawful assembly with the common object and with the common knowledge that the injuries caused to Gaje Singh were sufficient for his death and all the accused-appellants had come there to form the unlawful assembly and to cause the injuries to Gaje Singh. Two out of three injuries were on the vital part like head and intention and object of each of the appellant was common to kill Gaje Singh. Hence, the arguments made by the learned counsel for the appellant is not sustainable in the eye of law as the evidence discussed above.

25. On the above said evidence, the case under Sections 147 and 307 I.P.C. is made out against appellant Shiv Singh and the case under Sections 147 and 307/149 I.P.C. is made out against appellants Diwan Singh, Madan Singh, Chandan Singh, Pan Singh son of Chandan Singh and Pan Singh son of Kundan Singh.

26. PW.3 Km. Basant Devi alias Basuli Devi has stated that the field of the complainant is near the house of the appellant/ accused Chandan Singh. When she reached to her field then she saw that appellants/accused Chandan Singh, Shiv Singh and Ganguli Devi were beating her brother Bir Singh. Her brother Bir Singh was weeping. She asked to the appellants/accused not to beat her brother then Ganguli Devi (who has been acquitted by the trial court) caught her braid and appellant Shiv Singh torn her clothes and appellant Chandan Singh beat her with *Danda*. PW.5 Bir Singh has stated that he had gone to his field for

cutting the green barley for his buffaloes. That field is near the house of the appellant Chandan Singh. He had seen in the field that the human excreta was there, then he abused to the persons who had done this foul etc. On hearing this, three appellants/accused, namely, Shiv Singh, Chandan Singh and Gawali Devi came in his field. Gawali Devi snatched his sickle from his hand and Shiv Singh caught hold him and Chandan Singh slapped him then he cried and started weeping. After hearing his noise and weeping his sister Basuli Devi reached at the place of occurrence and she asked from the appellants/accused why they were beating to her brother. On this, Gawali Devi caught her braid and Shiv Singh torn her clothes and Chandan Singh beat her with *Lathi.*

27. The evidence of Basuli Devi and Bir Singh is supported by the medical report (Ex.Ka-3) of Basuli Devi. From the evidence of Basuli Devi, Bir Singh and statement of Dr. Ashok Sharma and from the medical report of Basuli Devi, it comes out that the case under Section 323/34 IPC is made out against appellants Shiv Singh and Chandan Singh.

28. On the basis of the evidence available on record, the judgment and order dated 03.08.1984 passed by the learned Session Judge, Almora in Sessions Trial No.13 of 1983 is correct and justified, as per the law. I am in full agreement with the judgment and order passed by the learned Sessions Judge, Almora.

29. Since appellants Madan Singh and Chandan Singh died during the pendency of the instant appeal, as

such the appeal against Madan Singh and Chandan Singh stands abated.

30. In view of the above said discussions, the appeal is devoid of merits and is hereby dismissed.

31. Let the record of the case be sent back to the trial court concerned for compliance of the order.

(Dharam Veer, J.)

October 11, 2007

RBS